THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.27934 of 2005

Dated:29.06.2006

Between:

M/s.Sri Vijaya Restaurant & Bar.

…Petitioners

and

The Commissioner, Prohibition & Excise, A.P.,Hyderabad, and others.

…Respondents

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.27934 of 2005

ORDER:

Heard the learned Counsel for the petitioner and the learned Government Pleader appearing for the respondents.

This writ petition is filed aggrieved by the action of the respondents in demanding the licence fee for a period of twelve months w.e.f. 1-7-2005 to 30-6-2006 in spite of the fact that Form 2-B licence for establishing a Bar under the provisions of A.P. Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for short, 'the Rules') was granted in the middle of the excise year.

The question whether the licensee, who is granted licence for the privilege of selling by Bar under the above Rules after the commencement of the licence period of 12 months, is entitled to pay the proportionate licence fees or is he liable to pay the annual licence fee for the entire period of 12 months has been considered by this Court in detail in W.P.No.23415 of 2005 and the same was allowed by order dated 25-4-2006 holding that the word "annual licence fees" employed in Rule 10, if read in the light of the definition of licence fees under Rule 3 (k) read with Rule 3 (o), it is clear that it includes proportionate licence fees. Accordingly, it was declared that the petitioner therein who is accorded sanction for grant of Form –2B licence in the middle of the excise year, is liable to pay only proportionate Licence Fee with reference to the actual period of licence. The said order was confirmed by a Division Bench of this Court in W.A.No.686 of 2006 by Judgment dated 19-6-2006 holding

as under :

> *"The incorporation of specific definition of the expression "Proportionate Licence Fee" in the 2005 Rules is clearly indicative of the intention of the rule making authority to charge Licence Fee only for the period during which the licensee can avail the benefit of licence. If the licence is granted for the entire licence period commencing from 1st July of the year, then he is bound to pay annual licence fee for the entire period of 12 months irrespective of the period of doing business. However, if the licence is granted for a shorter period, then the licensee is required to pay "Proportionate Licence Fee" only for that part of the licence period. If the Rule making authority had intended that every licensee shall, irrespective of the period of licence, pay annual licence fee for the whole of the year, then there was no occasion for the said authority to incorporate the definition of the expression 'Proportionate Licence Fee' or provide for grant of licence for a shorter period."*

Learned Counsel for the petitioner as well as the learned Government Pleader submitted that the issue involved in this writ petition is squarely covered by the ratio laid down in the above decision.

Accordingly, the Writ Petition is allowed holding that the petitioner is liable to pay the licence fee proportionately with reference to the actual period of licence. The excess licence fee, if any, collected from the petitioner shall be accordingly refunded or adjusted against other liabilities, if any, following due process of law. No order as to costs.

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(G.ROHINI, J)

Dated:29.06.2006
GJ